

FILED

1 Debbie P. Kirkpatrick, Esq. (SBN 207112)
 2 SESSIONS, FISHMAN & NATHAN IN CALIFORNIA, LLP
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07 NOV -7 PM 2:14

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIABY: *PMB* DEPUTY

Attorney for Nationwide Recovery Systems, Ltd.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

10 JAMES M. KINDER, an individual,) Case No.: **07 CV 2132 - H (CAB)**
 11 Plaintiff,)
 12 vs.) NOTICE OF REMOVAL OF ACTION
 13) UNDER 28 U.S.C. § 1441(b)
 14 NATIONWIDE RECOVERY SYSTEMS,)
 15 LTD., and DOES 1 through 100, inclusive,)
 16 Defendants.) (DIVERSITY)
 17)
 18)
 19 TO THE CLERK OF THE ABOVE-ENTITLED COURT:
 20 PLEASE TAKE NOTICE THAT defendant Nationwide Recovery Systems, Ltd.
 21 hereby removes to this Court the state court action described below.
 22 1. On August 14, 2007 an action was commenced in the Superior Court of the
 23 State of California, in and for the County of San Diego, entitled James M. Kinder,
 24 Plaintiff v. Nationwide Recovery Systems, Ltd, Defendant, as Case No. 37-2007-
 25 00073158-CU-MC-CTL. A copy of the Complaint is attached hereto as Exhibit A.
 26
 27 2. The first date upon which defendant Nationwide Recovery Systems, Ltd.
 28 received a copy of the said claim was October 9, 2007, when defendant was served with a

CR

copy of a Summons from said state court. A copy of the Summons is attached hereto as Exhibit B.

3. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1332, and is one which may be removed to this Court by defendant pursuant to the provisions of 28 U.S.C. § 1441(b) in that it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, as plaintiff seeks an award of \$500 in statutory damages for each of at least 186 calls which allegedly violate the Telephone Consumer Protection Act of 1991, and an award of \$1,500 for each violation that is found to be willful.

4. Defendant is informed and believes that plaintiff James M. Kinder was, and still is, a citizen of the State of California. Defendant Nationwide Recovery Systems, Ltd. was, at the time of the filing of this action, and still is, a Texas limited partnership having its principal place of business in the State of Texas, and is the only defendant that has been served summons and complaint in this action.

Dated: November 6, 2007

Sessions, Fishman & Nathan in California, LLP

Debbie P. Kirkpatrick
Attorney for Defendant
Nationwide Recovery Systems, Ltd.

Exhibit A

1 Chad Austin, Esq. SBN 235457
2 3129 India Street
3 San Diego, CA 92103-6014
Telephone: (619) 297-8888
3 Facsimile: (619) 295-1401
4 Attorney for Plaintiff JAMES M. KINDER, an individual

AUG 14 '07 PM 4:47

5 **COPY**
6
7

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO

10
11 JAMES M. KINDER, } CASE NO. 37-2007-00073158-CU-MC-CTL
12 Plaintiff, } COMPLAINT FOR DAMAGES
13 v. } Violations of Telephone Consumer
14 NATIONWIDE RECOVERY SYSTEMS, Ltd., } Protection Act of 1991
and DOES 1 through 100, inclusive,
15 Defendants.

16
17 COMES NOW Plaintiff JAMES M. KINDER (hereinafter referred to as "Plaintiff") who alleges
18 as follows:

19 **GENERAL ALLEGATIONS**

20 1. Plaintiff is, and at all times herein mentioned was, a resident of the County of San
21 Diego, State of California.

22 2. Defendant NATIONWIDE RECOVERY SYSTEMS, Ltd. (hereinafter referred to
23 as "Defendant"), was at all times herein mentioned a Texas Domestic Limited Partnership, doing
24 business in the County of San Diego, State of California.

25 3. Plaintiff is unaware of the true names and capacities of defendants sued herein as
26 DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.
27 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.
28 Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants

1 is responsible in some manner for the occurrences herein alleged and that Plaintiff's damages as
2 herein alleged were proximately caused by their conduct.

3 4. At all times herein mentioned each defendant was the partner, agent and employee
4 of each co-defendant herein and was at all times acting within the scope of such partnership, agency
5 and employment and each defendant ratified the conduct of each co-defendant herein.

FIRST AND ONLY CAUSE OF ACTION
[Violation of Telephone Consumer Protection Act of 1991]

8 5. Plaintiff realleges paragraphs 1 through 4 above and incorporates them herein by
9 reference.

10 6. Plaintiff is bringing this action pursuant to the provisions of the Telephone Consumer
11 Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R. §64.1200 – “TCPA”).

12 7. Subdivision (b) (1) (A) (iii) of Section 227 of Title 47 of the United States Code
13 makes it unlawful for any person to "Make any call (other than a call made for emergency purposes
14 or made with the prior express consent of the called party) using any automatic telephone dialing
15 system or an artificial or prerecorded voice...to any telephone number assigned to a paging service,
16 specialized mobile radio service, or other radio common carrier service, or any service for which the
17 called party is charged for the call."

18 8. Defendants have been calling Plaintiff's number assigned to a paging service, using
19 an Automatic Telephone Dialing System and/or an artificial or prerecorded voice on at least 186
20 occasions within the statutory period of the last 4 years, pursuant to 47 U.S.C. § 1658. These 186
21 calls are only the calls known to Plaintiff at this time and Plaintiff states on information and belief,
22 without yet having the aid of full discovery, that it is quite likely that Defendant has made many
23 more violative calls to Plaintiff's number assigned to a paging service than the 186 of which he is
24 currently aware.

25 9. Subdivision (b) (1) of Section 64.1200 of Title 47 of the Code of Federal
26 Regulations requires that all prerecorded telephone messages disseminated within the United States
27 must "At the beginning of the message, state clearly the identity of the business, individual, or other
28 entity that is responsible for initiating the call. If a business is responsible for initiating the call, the

1 name under which the entity is registered to conduct business with the State Corporation
2 Commission (or comparable regulatory authority) must be stated."

3 10. Defendants' illegal prerecorded message calls failed to comply with this requirement.

4 11. Subdivision (b) (2) of Section 64.1200 of Title 47 of the Code of Federal
5 Regulations requires that all prerecorded telephone messages disseminated within the United States
6 must "state clearly the telephone number (other than that of the autodialer or prerecorded message
7 player that placed the call) of such business, other entity, or individual. The telephone number may
8 not be a 900 number or any number for which charges exceed local or long distance transmission
9 charges. For telemarketing messages to residential telephone subscribers, such telephone numbers
10 must permit any individual to make a do-not-call request during regular business hours for the
11 duration of the telemarketing campaign."

12 12. Defendants' illegal prerecorded message calls failed to comply with this
13 requirement.

14 13. Subdivision (b)(3) of section 227 of title 47 of the United States Code permits a
15 private right of action in state court for violations of 47 U.S.C. §227 (b) (1) (A) (iii), 47 C.F.R.
16 §64.1200 (b) (1) and 47 C.F.R. §64.1200 (b) (2). Plaintiff is entitled to a minimum of \$500.00 in
17 statutory damages for each such violation. If the court finds that defendants' violations were willful
18 or knowing, it may, in its discretion, award up to three times that amount.

19 WHEREFORE Plaintiff prays for judgment against defendants, and each of them, as
20 follows:

21 On the FIRST AND ONLY CAUSE OF ACTION:

- 22 1. For an award of \$500.00 for each violation of 47 U.S.C. §227 and 47 C.F.R. §
23 64.1200;
24 2. For an award of \$1,500.00 for each such violation found to have been willful;
25 3. For costs of suit herein incurred; and

26 ///

27 ///

28 ///

1 4. For such other and further relief as the Court deems proper.

2 Dated: August 14, 2007

3
4
5 By: 
6 CHAD AUSTIN, Esq.
7 Attorney for Plaintiff JAMES M.
8 KINDER

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|--|---|
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO | |
| STREET ADDRESS: 330 West Broadway | |
| MAILING ADDRESS: 330 West Broadway | |
| CITY AND ZIP CODE: San Diego, CA 92101 | |
| BRANCH NAME: Central | |
| TELEPHONE NUMBER: (619) 885-8148 | |
| PLAINTIFF(S) / PETITIONER(S): James A. Kinder | |
| DEFENDANT(S) / RESPONDENT(S): Nationwide Recovery Systems, LTD | |
| KINDER VS. NATIONWIDE RECOVERY SYSTEMS, LTD | |
| NOTICE OF CASE ASSIGNMENT | CASE NUMBER: 37-2007-00073158-CU-MC-CTL |

Judge: Richard E. L. Strauss

Department: C-75

COMPLAINT/PETITION FILED: 08/14/2007

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

COMPLAINTS: Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

| | | |
|--|--|--|
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO | | FOR COURT USE ONLY |
| STREET ADDRESS: 330 West Broadway | | |
| MAILING ADDRESS: 330 West Broadway | | |
| CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 | | |
| BRANCH NAME: Central | | |
| PLAINTIFF(S): James A. Kinder | | |
| DEFENDANT(S): Nationwide Recovery Systems, LTD | | |
| SHORT TITLE: KINDER VS. NATIONWIDE RECOVERY SYSTEMS, LTD | | |
| STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION PROCESS (CRC 3.221) | | CASE NUMBER: 37-2007-00073158-CU-MC-CTL |

Judge: Richard E. L. Strauss

Department: C-75

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution process. Selection of any of these options will not delay any case management time-lines.

- | | |
|---|---|
| <input type="checkbox"/> Court-Referred Mediation Program | <input type="checkbox"/> Court-Ordered Nonbinding Arbitration |
| <input type="checkbox"/> Private Neutral Evaluation | <input type="checkbox"/> Court-Ordered Binding Arbitration (Stipulated) |
| <input type="checkbox"/> Private Mini-Trial | <input type="checkbox"/> Private Reference to General Referee |
| <input type="checkbox"/> Private Summary Jury Trial | <input type="checkbox"/> Private Reference to Judge |
| <input type="checkbox"/> Private Settlement Conference with Private Neutral | <input type="checkbox"/> Private Binding Arbitration |
| <input type="checkbox"/> Other (specify): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate: (mediation & arbitration only) _____

Date: _____

Date: _____

Name of Plaintiff _____

Name of Defendant _____

Signature _____

Signature _____

Name of Plaintiff's Attorney _____

Name of Defendant's Attorney _____

Signature _____

Signature _____

(Attach another sheet if additional names are necessary). It is the duty of the parties to notify the court of any settlement pursuant to California Rules of Court, 3.1385. Upon notification of the settlement the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court and all un-served, non-appearing or actions by names parties are dismissed.

IT IS SO ORDERED.

Dated: 08/16/2007

JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NUMBER: 37-2007-00073158-CU-MC-CTL CASE TITLE: Kinder vs. Nationwide Recovery Systems, LTD

NOTICE TO LITIGANTS/ADR INFORMATION PACKAGE

You are required to serve a copy of this Notice to Litigants/ADR Information Package and a copy of the blank Stipulation to Alternative Dispute Resolution Process (received from the Civil Business Office at the time of filing) with a copy of the Summons and Complaint on all defendants in accordance with San Diego Superior Court Rule 2.1.5, Division II and CRC Rule 201.9.

ADR POLICY

It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution ("ADR") in all general civil cases. The court has long recognized the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court's expectation that litigants will utilize some form of ADR – i.e. the court's mediation or arbitration programs or other available private ADR options as a mechanism for case settlement before trial.

ADR OPTIONS

1) CIVIL MEDIATION PROGRAM: The San Diego Superior Court Civil Mediation Program is designed to assist parties with the early resolution of their dispute. All general civil independent calendar cases, including construction defect, complex and eminent domain cases are eligible to participant in the program. Limited civil collection cases are not eligible at this time. San Diego Superior Court Local Rule 2.31, Division II addresses this program specifically. Mediation is a non-binding process in which a trained mediator 1) facilitates communication between disputants, and 2) assists parties in reaching a mutually acceptable resolution of all or part of their dispute. In this process, the mediator carefully explores not only the relevant evidence and law, but also the parties' underlying interests, needs and priorities. The mediator is not the decision-maker and will not resolve the dispute – the parties do. Mediation is a flexible, informal and confidential process that is less stressful than a formalized trial. It can also save time and money, allow for greater client participation and allow for more flexibility in creating a resolution.

Assignment to Mediation, Cost and Timelines: Parties may stipulate to mediation at any time up to the CMC or may stipulate to mediation at the CMC. Mediator fees and expenses are split equally by the parties, unless otherwise agreed. Mediators on the court's approved panel have agreed to the court's payment schedule for county-referred mediation: \$150.00 per hour for each of the first two hours and their individual rate per hour thereafter. Parties may select any mediator, however, the court maintains a panel of court-approved mediators who have satisfied panel requirements and who must adhere to ethical standards. All court-approved mediator fees and other policies are listed in the Mediator Directory at each court location to assist parties with selection. **Discovery:** Parties do not need to conduct full discovery in the case before mediation is considered, utilized or referred. **Attendance at Mediation:** Trial counsel, parties and all persons with full authority to settle the case must personally attend the mediation, unless excused by the court for good cause.

2) JUDICIAL ARBITRATION: Judicial Arbitration is a binding or non-binding process where an arbitrator applies the law to the facts of the case and issues an award. The goal of judicial arbitration is to provide parties with an adjudication that is earlier, faster, less formal and less expensive than trial. The arbitrator's award may either become the judgment in the case if all parties accept or if no trial de novo is requested within the required time. Either party may reject the award and request a trial de novo before the assigned judge if the arbitration was non-binding. If a trial de novo is requested, the trial will usually be scheduled within a year of the filing date.

Assignment to Arbitration, Cost and Timelines: Parties may stipulate to binding or non-binding judicial arbitration or the judge may order the matter to arbitration at the case management conference, held approximately 150 days after filing, if a case is valued at under \$50,000 and is "at issue". The court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. In addition, if parties select an arbitrator from the court's panel, the court will pay the arbitrator's fees. Superior Court

3) SETTLEMENT CONFERENCES: The goal of a settlement conference is to assist the parties in their efforts to negotiate a settlement of all or part of the dispute. Parties may, at any time, request a settlement conference before the judge assigned to their case; request another assigned judge or a pro tem to act as settlement officer; or may privately utilize the services of a retired judge. The court may also order a case to a mandatory settlement conference prior to trial before the court's assigned Settlement Conference judge.

4) OTHER VOLUNTARY ADR: Parties may voluntarily stipulate to private ADR options outside the court system including private binding arbitration, private early neutral evaluation or private judging at any time by completing the "Stipulation to Alternative Dispute Resolution Process" which is included in this ADR package. Parties may also utilize mediation services offered by programs that are partially funded by the county's Dispute Resolution Programs Act. These services are available at no cost or on a sliding scale based on need. For a list of approved DRPA providers, please contact the County's DRPA program office at (619) 238-2400.

ADDITIONAL ADR INFORMATION: For more information about the Civil Mediation Program, please contact the Civil Mediation Department at (619) 515-8908. For more information about the Judicial Arbitration Program, please contact the Arbitration Office at (619) 531-3818. For more information about Settlement Conferences, please contact the Independent Calendar department to which your case is assigned. Please note that staff can only discuss ADR options and cannot give legal advice.

| | | |
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| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO | | FOR COURT USE ONLY |
| STREET ADDRESS: 330 West Broadway | | |
| MAILING ADDRESS: 330 West Broadway | | |
| CITY AND ZIP CODE: San Diego, CA 92101 | | |
| BRANCH NAME: Central | | |
| TELEPHONE NUMBER: (619) 685-6148 | | |
| PLAINTIFF(S): James A. Kinder | | |
| DEFENDANT(S): Nationwide Recovery Systems, LTD | | |
| JAMES A. KINDER VS. NATIONWIDE RECOVERY SYSTEMS, LTD | | 08/22/2007 |
| NOTICE OF CASE REASSIGNMENT | | CASE NUMBER: 37-2007-00073158-CU-MC-CTL |

Filed : 08/14/2007

EFFECTIVE IMMEDIATELY, THE ABOVE-ENTITLED CASE HAS BEEN REASSIGNED

to Judge Charles R. Hayes, in Department C-66
due to the following reason: Peremptory Challenge

All subsequent documents filed in this case must include the name of the new judge and the department number on the first page immediately below the number of the case. All counsel and self-represented litigants are advised that Division II of the Superior Court Rules is strictly enforced. It is the duty of each plaintiff (and cross-complainant) to serve a copy of this notice with the complaint (and cross-complaint).

Exhibit B

**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

Nationwide Recovery Systems, Ltd. and Does 1 through 100, inclusive.

10-09-01

SUM-100FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

AUG 14 2007 PM 11:47

COPY**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

James M. Kinder

**DOCUMENTS FOR
SERVICE OF PROCESS**FILED
CIVIL BUSINESS OFFICE
CENTRAL DIVISION

AUG 14 2007

CLERK - SUPERIOR COURT
SAN DIEGO COUNTY, CA

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/seithelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/seithelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/seithelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumple con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/seithelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

San Diego Superior Court
330 W. Broadway
San Diego, CA 92101
Central DivisionCASE NUMBER: 37-2007-00073158-CU-MC-CTL
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Chad Austin, Esq.
3129 India St.
San Diego, CA 92103-6014
SBN 235457

619-297-8888 F 619-295-1401

DATE: AUG 14 2007
(Fecha)Clerk, by L. REYES, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

[SEAL]

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify): Nationwide Recovery Systems, LTD.

under: CCP 416.10 (corporation) CCP 416.60 (minor) CCP 416.20 (defunct corporation) CCP 416.70 (conservatee) CCP 416.40 (association or partnership) CCP 416.90 (authorized person) other (specify):4. by personal delivery on (date):

Page 1 of 1

CM-010

| | | |
|--|--|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Chad Austin, Esq. 3129 India St. San Diego, CA 92103-6014 SBN 235457 | | FOR COURT USE ONLY COPY AUG 14 2007 DM 4307 |
| TELEPHONE NO.: 619-297-8888 FAX NO.: 619-295-1401 ATTORNEY FOR (Name): James M. Kinder | | |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: same CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central Division | | |
| CASE NAME: Kinder v. Nationwide Recovery Systems, Ltd. | | |
| CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited <input type="checkbox"/> Limited (Amount demanded exceeds \$25,000) (Amount demanded is \$25,000 or less) | | Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) |
| CASE NUMBER: 37-2007-00073158-CU-MC-CTL JUDGE: DEPT: | | |

Items 1-6 below must be completed (see instructions on page 2).

| | | |
|--|--|---|
| 1. Check one box below for the case type that best describes this case: | | |
| Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15) | Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43) |

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- Large number of separately represented parties
 - Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
 - Substantial amount of documentary evidence
 - Large number of witnesses
 - Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 - Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 1

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 08/14/2007

Chad Austin, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

1 CASE NAME: KINDER, JAMES M. v. NCO FINANCIAL SYSTEMS, INC.
2 CASE NO: 37-2007-67042-CU-MC-CTL

3 **PROOF OF SERVICE**

4 I, the undersigned, hereby certify that I am a citizen of the United States, over the age of
5 18 years and not a party to the within action; my business address is 3667 Voltaire Street,
6 San Diego, California 92106. On this date I served the within:

7 **NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441 (B) (DIVERSITY)**
(XX) BY U.S. MAIL

8 I served a true and correct copy of the above-named documents by mail by placing
9 the same in a sealed envelope with postage fully prepaid, and depositing said envelope in
10 the U.S. mail at San Diego, California. Said envelope(s) was/were addressed as listed
hereafter:

11 () BY FACSIMILE MACHINE

12 I caused to be transmitted by facsimile machine a true copy of the above-named
13 documents to the below listed. Attached hereto is the Confirmation Report confirming
the status of the transmission.

14 () BY PERSONAL SERVICE

15 I caused to be served by hand a true copy of the above named document as listed
hereafter.

16 Chad Austin, Esq.
17 3129 India St.
18 San Diego, CA 92103

19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct.

21 Dated: November 6, 2007

22 
23 Ann M. Coito
24
25
26
27
28

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED

I. (a) PLAINTIFFS

James M. Kinder

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Nationwide Recovery Systems, Ltd.

07 NOV -7 PM 2:16

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Chad Austin, Esq.,
3129 India Street, San Diego, CA 92103 619-297-8888NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED BY:Attorneys (If Known) 07 NOV 2132 H (CA#)Debbie P. Kirkpatrick, Esq., Sessions, Fishman & Nathan LLP in CA
3667 Voltaire Street, San Diego, CA 92106 619-758-1891

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

| Citizen of This State | PTF | DEF | PTF | DEF |
|-------------------------------------|----------------------------|---------------------------------------|--------------------------|----------------------------|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> | <input type="checkbox"/> 4 |
| <input type="checkbox"/> | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> | <input type="checkbox"/> 5 |
| <input type="checkbox"/> | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> | <input type="checkbox"/> 6 |

Incorporated or Principal Place of Business In This State

Incorporated and Principal Place of Business In Another State

Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|---|---|--|--|--|
| <input type="checkbox"/> 110 Insurance | <input type="checkbox"/> PERSONAL INJURY | <input type="checkbox"/> 610 Agriculture | <input type="checkbox"/> 422 Appeal 28 USC 158 | <input type="checkbox"/> 400 State Reapportionment |
| <input type="checkbox"/> 120 Marine | <input type="checkbox"/> 310 Airplane | <input type="checkbox"/> 620 Other Food & Drug | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 410 Antitrust |
| <input type="checkbox"/> 130 Miller Act | <input type="checkbox"/> 315 Airplane Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 | <input type="checkbox"/> | <input type="checkbox"/> 430 Banks and Banking |
| <input type="checkbox"/> 140 Negotiable Instrument | <input type="checkbox"/> 320 Assault, Libel & Slander | <input type="checkbox"/> 630 Liquor Laws | <input type="checkbox"/> | <input type="checkbox"/> 450 Commerce |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment | <input type="checkbox"/> 330 Federal Employers' Liability | <input type="checkbox"/> 640 R.R. & Truck | <input type="checkbox"/> | <input type="checkbox"/> 460 Deportation |
| <input type="checkbox"/> 151 Medicare Act | <input type="checkbox"/> 340 Marine | <input type="checkbox"/> 650 Airline Regs. | <input type="checkbox"/> | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 345 Marine Product Liability | <input type="checkbox"/> 660 Occupational Safety/Health | <input type="checkbox"/> | <input type="checkbox"/> 480 Consumer Credit |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits | <input type="checkbox"/> 350 Motor Vehicle | <input type="checkbox"/> 690 Other | <input type="checkbox"/> | <input type="checkbox"/> 490 Cable/Sat TV |
| <input type="checkbox"/> 160 Stockholders' Suits | <input type="checkbox"/> 355 Motor Vehicle Product Liability | <input type="checkbox"/> PERSONAL PROPERTY | <input type="checkbox"/> | <input type="checkbox"/> 810 Selective Service |
| <input type="checkbox"/> 190 Other Contract | <input type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 370 Other Fraud | <input type="checkbox"/> | <input type="checkbox"/> 850 Securities/Commodities/ Exchange |
| <input type="checkbox"/> 195 Contract Product Liability | <input type="checkbox"/> | <input type="checkbox"/> 371 Truth in Lending | <input type="checkbox"/> | <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 |
| <input type="checkbox"/> 196 Franchise | <input type="checkbox"/> | <input type="checkbox"/> 380 Other Personal Property Damage | <input type="checkbox"/> | <input checked="" type="checkbox"/> 890 Other Statutory Actions |
| <input type="checkbox"/> REAL PROPERTY | <input type="checkbox"/> CIVIL RIGHTS | <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> | <input type="checkbox"/> 891 Agricultural Acts |
| <input type="checkbox"/> 210 Land Condemnation | <input type="checkbox"/> 441 Voting | <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: | <input type="checkbox"/> | <input type="checkbox"/> 892 Economic Stabilization Act |
| <input type="checkbox"/> 220 Foreclosure | <input type="checkbox"/> 442 Employment | <input type="checkbox"/> 530 General | <input type="checkbox"/> | <input type="checkbox"/> 893 Environmental Matters |
| <input type="checkbox"/> 230 Rent Lease & Ejectment | <input type="checkbox"/> 443 Housing/ Accommodations | <input type="checkbox"/> 535 Death Penalty | <input type="checkbox"/> | <input type="checkbox"/> 894 Energy Allocation Act |
| <input type="checkbox"/> 240 Torts to Land | <input type="checkbox"/> 444 Welfare | <input type="checkbox"/> 540 Mandamus & Other | <input type="checkbox"/> | <input type="checkbox"/> 895 Freedom of Information Act |
| <input type="checkbox"/> 245 Tort Product Liability | <input type="checkbox"/> 445 Amer. w/Disabilities - Employment | <input type="checkbox"/> 550 Civil Rights | <input type="checkbox"/> | <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice |
| <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 446 Amer. w/Disabilities - Other | <input type="checkbox"/> 555 Prison Condition | <input type="checkbox"/> | <input type="checkbox"/> 950 Constitutionality of State Statutes |
| <input type="checkbox"/> | <input type="checkbox"/> 440 Other Civil Rights | <input type="checkbox"/> | <input type="checkbox"/> | |
| <input type="checkbox"/> 710 Fair Labor Standards Act | <input type="checkbox"/> 720 Labor/Mgmt. Relations | <input type="checkbox"/> 861 HIA (1395ff) | <input type="checkbox"/> | |
| <input type="checkbox"/> 790 Other Labor Litigation | <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act | <input type="checkbox"/> 862 Black Lung (923) | <input type="checkbox"/> | |
| <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> 740 Railway Labor Act | <input type="checkbox"/> 863 DIWC/DIWW (405(g)) | <input type="checkbox"/> | |
| <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | <input type="checkbox"/> 791 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 864 SSID Title XVI | <input type="checkbox"/> | |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> | |
| <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> FEDERAL TAX SUITS | <input type="checkbox"/> | <input type="checkbox"/> | |

V. ORIGIN

(Place an "X" in One Box Only)

- | | | | | | | |
|--|--|--|---|--|---|--|
| <input type="checkbox"/> 1 Original Proceeding | <input checked="" type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|--|--|--|---|--|---|--|

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC 1332; 28 USC 1441(b)

Brief description of cause: Plaintiff claims statutory damages under Telephone Consumer Protection Act

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/06/2007

SIGNATURE OF ATTORNEY-OF-RECORD

FOR OFFICE USE ONLY

RECEIPT # 144781AMOUNT \$350 -11/17/07 64
APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

144281 - BH

November 07, 2007
14:17:08

Civ Fil Non-Pris

USAO #: 07CV2132 CIVIL FILING
Judge.: MARILYN L HUFF
Amount.: \$350.00 CK
Check#: BC# 1691

Total-> \$350.00

FROM: KINDER V. NATIONWIDE
CIVIL FILING